

FIRST REGULAR SESSION

# SENATE BILL NO. 356

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR MUNZLINGER.

Read 1st time February 28, 2011, and ordered printed.

TERRY L. SPIELER, Secretary.

1787S.011

## AN ACT

To repeal sections 276.416, 276.421, 276.436, 276.441, 276.446, and 411.280, RSMo, and to enact in lieu thereof four new sections relating to grain sale and storage, with existing penalty provisions.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 276.416, 276.421, 276.436, 276.441, 276.446, and  
2 411.280, RSMo, are repealed and four new sections enacted in lieu thereof, to be  
3 known as sections 276.421, 276.436, 276.441, and 411.280, to read as follows:

276.421. 1. All applications shall be accompanied by a true and accurate  
2 financial statement of the applicant, prepared within six months of the date of  
3 application, setting forth all the assets, liabilities and net worth of the applicant.  
4 **In the event that the applicant has been engaged in business as a grain**  
5 **dealer for at least one year, the financial statement shall set forth the**  
6 **aggregate dollar amount paid for grain purchased in Missouri and**  
7 **those states with whom Missouri has entered into contracts or**  
8 **agreements as authorized by section 276.566 during the last completed**  
9 **fiscal period of the applicant. In the event the applicant has been**  
10 **engaged in business for less than one year or has not previously**  
11 **engaged in business as a grain dealer, the financial statement shall set**  
12 **forth the estimated aggregate dollar amount to be paid for grain**  
13 **purchased in Missouri and those states with whom Missouri has**  
14 **entered into contracts or agreements as authorized by section 276.566**  
15 **during the applicant's initial fiscal period.** All applications shall also be  
16 accompanied by a true and accurate statement of income and expenses for the  
17 applicant's most recently completed fiscal year. The financial statements

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

18 required by this chapter shall be prepared in conformity with generally accepted  
19 accounting principles; except that, the director may promulgate rules allowing for  
20 the valuation of assets by competent appraisal.

21         2. The financial statement required by subsection 1 of this section shall  
22 be audited or reviewed by a certified public accountant. The financial statement  
23 may not be audited or reviewed by the applicant, or an employee of the applicant,  
24 if an individual, or, if the applicant is a corporation or partnership, by an officer,  
25 shareholder, partner, or a direct employee of the applicant.

26         3. The director may require any additional information or verification  
27 with respect to the financial resources of the applicant as he deems necessary for  
28 the effective administration of this chapter. The director may promulgate rules  
29 setting forth minimum standards of acceptance for the various types of financial  
30 statements filed in accordance with the provisions of this chapter. The director  
31 may promulgate rules requiring a statement of retained earnings, a statement of  
32 changes in financial position, and notes and disclosures to the financial  
33 statements for all licensed grain dealers or all grain dealers required to be  
34 licensed. The additional information or verification referred to herein may  
35 include, but is not limited to, requiring that the financial statement information  
36 be reviewed or audited in accordance with standards established by the American  
37 Institute of Certified Public Accountants.

38         4. All grain dealers shall provide the director with a copy of all financial  
39 statements and updates to financial statements utilized to secure the bonds  
40 required by sections 276.401 to 276.582.

41         5. All financial statements submitted to the director for the purposes of  
42 this chapter shall be accompanied by a certification by the applicant or the chief  
43 executive officer of the applicant, subject to the penalty provision set forth in  
44 subsection 4 of section 276.536, that to the best of his knowledge and belief the  
45 financial statement accurately reflects the financial condition of the applicant for  
46 the fiscal period covered in the statement.

47         6. Any person who knowingly prepares or assists in the preparation of an  
48 inaccurate or false financial statement which is submitted to the director for the  
49 purposes of this chapter, or who during the course of providing bookkeeping  
50 services or in reviewing or auditing a financial statement which is submitted to  
51 the director for the purposes of this chapter, becomes aware of false information  
52 in the financial statement and does not disclose in notes accompanying the  
53 financial statements that such false information exists, or does not disassociate

54 himself from the financial statements prior to submission, is guilty of a class C  
55 felony. Additionally, such persons are liable for any damages incurred by sellers  
56 of grain selling to a grain dealer who is licensed or allowed to maintain his  
57 license based upon inaccuracies or falsifications contained in the financial  
58 statement.

59 7. [Except as set forth in section 276.511 which mandates higher  
60 requirements for class I grain dealers,] Any licensed grain dealer or applicant for  
61 a grain dealer's license [who purchases less than four hundred thousand dollars  
62 worth of grain, during the dealer's last completed fiscal year, in the state of  
63 Missouri and those states with whom Missouri has entered into contracts or  
64 agreements as authorized by section 276.566 must] **shall** maintain a minimum  
65 net worth equal to [the greater of ten thousand dollars or] five percent of [such]  
66 **annual** grain purchases[. If grain purchases during the dealer's last completed  
67 fiscal year are four hundred thousand dollars or more, the dealer must maintain  
68 a net worth equal to the greater of twenty thousand dollars or one percent of  
69 grain purchases] **as set forth in the financial statements required by this**  
70 **chapter**. If the dealer or applicant is deficient in meeting this net worth  
71 requirement, he must post additional bond as required in section 276.436.

72 8. **Any licensed grain dealer or applicant for a grain dealer's**  
73 **license shall have and maintain current assets at least equal to one**  
74 **hundred percent of current liabilities. The financial statement**  
75 **required by this chapter shall set forth positive working capital in the**  
76 **form of a current ratio of the total adjusted current assets to the total**  
77 **adjusted current liabilities of at least one to one.**

78 (1) **The director may allow applicants to offset negative working**  
79 **capital by increasing the grain dealer surety bond required by section**  
80 **276.426 up to the total amount of negative working capital at the**  
81 **discretion of the director.**

82 (2) **Adjusted current assets shall be calculated by deducting from**  
83 **the stated current assets shown on the financial statement submitted**  
84 **by the applicant any current asset resulting from notes receivable from**  
85 **related persons, accounts receivable from related persons, stock**  
86 **subscriptions receivable, and any other related person receivables.**

87 (3) **A disallowed current asset shall be netted against any related**  
88 **liability and the net result, if an asset, shall be subtracted from the**  
89 **current assets.**

276.436. 1. The total amount of the surety bond required of a dealer  
2 licensed pursuant to sections 276.401 to 276.582 shall be established by the  
3 director by rule, but in no event shall such bond be less than [twenty] **fifty**  
4 thousand dollars nor more than [three hundred thousand] **one million** dollars,  
5 except as authorized by other provisions of sections 276.401 to 276.582.

6 2. The formula for determining the amount of bond shall be established  
7 by the director by rule and shall be computed at a rate of no less than the  
8 principal amount to the nearest one thousand dollars, equal to [not less than one  
9 percent and not more than] five percent of the aggregate dollar amount paid by  
10 the dealer for grain purchased in the state of Missouri and those states with  
11 whom Missouri has entered into contracts or agreements as authorized by section  
12 276.566 during the dealer's last completed fiscal year, or, in the case of a dealer  
13 who has been engaged in business as a grain dealer for less than one year or who  
14 has not previously engaged in such business, [not less than one percent and not  
15 more than] five percent of the estimated aggregate dollar amount to be paid by  
16 the dealer for grain purchased in the state of Missouri and those states with  
17 whom Missouri has entered into contracts or agreements as authorized by section  
18 276.566 during the applicant's initial fiscal year.

19 3. Any licensed grain dealer or applicant who has, at any time, a net  
20 worth less than the amount required by subsection 7 of section 276.421, shall be  
21 required to obtain a surety bond in the amount of one thousand dollars for each  
22 one thousand dollars or fraction thereof of the net worth deficiency. Failure to  
23 post such additional bond is grounds for refusal to license or the suspension or  
24 revocation of a license issued under sections 276.401 to 276.582. This additional  
25 bond can be in addition to or greater than or both in addition to and greater than  
26 the maximum bond as set by this section.

27 4. The director may, when the question arises as to a grain dealer's  
28 ability to pay for grain purchased, require a grain dealer to post an additional  
29 bond in a dollar amount deemed appropriate by the director. Such additional  
30 bond can be in addition to or greater than or both in addition to and greater than  
31 the maximum bond as set by this section. The director must furnish to the  
32 dealer, by certified mail, a written statement of the reasons for requesting  
33 additional bond and the reasons for questioning the dealer's ability to  
34 pay. Failure to post such additional bond is a ground for modification, suspension  
35 or revocation by the director of a license issued under sections 276.401 to  
36 276.582. The determination of insufficiency of a bond and of the amount of the

37 additional bond shall be based upon evidence presented to the director that a  
38 dealer:

39 (1) Is or may be unable to meet his dollar or grain obligations as they  
40 become due;

41 (2) Has acted or is acting in a way which might lead to the impairment  
42 of his capital;

43 (3) As a result of his activity, inactivity, or purchasing and pricing  
44 practices and procedures, including, but not limited to, the dealer's deferred  
45 pricing or deferred payment practices and procedures, is or may be unable to  
46 honor his grain purchase obligations arising out of his dealer business. The  
47 amount of the additional bond required under this subsection shall not exceed the  
48 amount of the dealer's current loss position. Current loss position shall be the  
49 sum of the dealer's current liabilities less current assets or the amount by which  
50 he is currently unable to meet the grain purchase obligations arising out of his  
51 dealer business.

52 5. One bond, cumulative as to minimum requirements, may be given  
53 where a dealer has multiple licenses; except however, that in computing the  
54 amount of the single bond the grain dealer may add together the total purchases  
55 of grain of all locations to be covered thereby and use the aggregate total  
56 purchases for the fiscal year for the purpose of computing bond. However, this  
57 single cumulative bond must be at least equal to ~~[twenty]~~ **fifty** thousand dollars  
58 per dealer license issued up to the ~~[three hundred thousand]~~ **one million** dollar  
59 maximum bond amount specified in subsection 1 of this section. When a grain  
60 dealer elects to provide a single bond for a number of licensed locations, the total  
61 assets of all the licensed locations shall be subject to liabilities of each individual  
62 licensed location.

63 6. Failure of a grain dealer to provide and file a bond and financial  
64 statement and to keep such bond in force shall be grounds for the suspension or  
65 revocation, by the director, of a license issued under sections 276.401 to 276.582.

66 7. A dealer shall be required to post additional surety bond when he  
67 surpasses the estimated aggregate dollar amount to be paid for grain purchased  
68 as set forth in subsection 2 of this section. Such additional bond shall be  
69 determined by the director so as to effectively protect sellers of grain dealing with  
70 such dealer.

276.441. 1. Any grain dealer who is of the opinion that his net worth is  
2 sufficient to guarantee payment for grain purchased by him may make a formal,

3 written request to the director that he be relieved of the obligation of filing a  
4 bond in excess of the minimum bond of [twenty] **fifty** thousand dollars. Such  
5 request shall be accompanied by a financial statement of the applicant, prepared  
6 within four months of the date of such request and accompanied by such  
7 additional information concerning the applicant and his finances as the director  
8 may require which may include the request for submission of a financial  
9 statement audited by a public accountant.

10         2. If such financial statement discloses a net worth equal to at least five  
11 times the amount of the bond otherwise required by sections 276.401 to 276.582,  
12 and the director is otherwise satisfied as to the financial ability and resources of  
13 the applicant, the director may waive that portion of the required bond in excess  
14 of [twenty] **fifty** thousand dollars for each license issued.

411.280. Every warehouseman licensed under the provisions of this  
2 chapter shall have and maintain a net worth equal to the greater of ten thousand  
3 dollars or the amount which results from multiplying the storage capacity of the  
4 warehouse by [fifteen] **twenty-five** cents per bushel. Capital stock, for the  
5 purpose of determining the net worth, shall not be considered a liability. Any  
6 deficiency in required net worth above the ten thousand dollar minimum  
7 requirement may be met by supplying additional bond in an amount equal to one  
8 thousand dollars for each one thousand dollars or fraction thereof of deficiency.

[276.416. In the event that the applicant has been engaged  
2 in business as a grain dealer for at least one year, the application  
3 shall set forth the aggregate dollar amount paid for grain  
4 purchased in Missouri and those states with whom Missouri has  
5 entered into contracts or agreements as authorized by section  
6 276.566 during the last completed fiscal period of the applicant. In  
7 the event the applicant has been engaged in business for less than  
8 one year or has not previously engaged in business as a grain  
9 dealer, the application shall set forth the estimated aggregate  
10 dollar amount to be paid for grain purchased in Missouri and those  
11 states with whom Missouri has entered into contracts or  
12 agreements as authorized by section 276.566 during the applicant's  
13 initial fiscal period.]

[276.446. Any grain dealer whose total purchases of grain  
2 within Missouri and those states with whom Missouri has entered  
3 into contracts or agreements as authorized by section 276.566

4 during any fiscal year, do not exceed an aggregate dollar amount  
5 of four hundred thousand dollars may satisfy the bonding  
6 requirements of sections 276.401 to 276.581 by filing with the  
7 director a bond at the rate of one thousand dollars for each twenty  
8 thousand dollars or fraction thereof of the dollar amount to be  
9 purchased, with a minimum bond of ten thousand dollars required.]

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